

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
CHRISTIAN CASTILLO,

Plaintiff,

-against-

THE CITY OF NEW YORK and P.O. JOHN HEWITT,
Shield No. 676,

Defendants.
----- X

Verified Complaint
Index #:

Plaintiff, by his attorneys, RUBERT & GROSS, P.C., complaining of Defendants, THE CITY OF NEW YORK (hereinafter referred to as "CITY") and P.O. JOHN HEWITT, Shield No. 676 (hereinafter referred to as "HEWITT") alleges as follows:

1. That at all times hereinafter mentioned, Plaintiff, CHRISTIAN CASTILLO, was and still is a resident of Bronx County, City and State of New York.
2. At all times hereinafter mentioned, defendant, CITY, was and is a municipal corporation created, organized and duly existing under and by virtue of the laws of the State of New York.
3. At all times hereinafter mentioned, defendant, CITY, its agents, servants and/or employees operated, maintained, managed and controlled the New York City Police Department including all police officers thereof.
4. At all times herein after mentioned, the New York City Police Department is an agency, instrumentality, department of defendant, CITY, and/or defendant, CITY, derived benefits from the activities of the New York City Police Department.

5. At all times hereinafter mentioned, defendant, HEWITT, was an employee and/or agent of the New York City Police Department, a municipal agency of defendant, CITY.

6. Defendant, HEWITT, is sued individually and in his official capacity.

7. At all times hereinafter mentioned, defendant, HEWITT, was acting within the scope of his employment as a police officer with the New York City Police Department.

8. On June 3, 2013 plaintiff duly served a Notice of Claim upon defendants in the manner and mode required by law.

9. At all times hereinafter mentioned, defendant, HEWITT, was acting under color of law and authority as a police officer with the New York City Police Department.

10. That plaintiff has complied with all conditions precedent applicable to the instant action.

11. That this action falls within one or more of the exceptions of CPLR §1602, including, but not limited to CPLR §1602 (11).

FIRST CAUSE OF ACTION

12. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "17" above as if fully set forth herein.

13. That on August 17, 2013, plaintiff presented to the 34th Precinct located at 4295 Broadway, New York, New York, where he was arrested, imprisoned, handcuffed, detained and otherwise injured without cause and/or justification by police officer employed by defendant, CITY, including but not limited to defendant, HEWITT.

14. That subsequent to Plaintiff's arrest, defendant, CITY, through its agents, servants and/or employees, including, but not limited to defendant, HEWITT, did maliciously cause a

criminal prosecution to be commenced against Plaintiff in the Criminal Court of the City of New York, New York County, without probable cause and in bad faith.

15. That in commencing and continuing said malicious prosecution, defendant, CITY, its agents, servants and/or employees, caused Plaintiff to be falsely charged with acts in violation of the Penal Law of the State of New York.

16. That in commencing and continuing the said malicious prosecution, defendant, HEWITT, caused Plaintiff to be falsely charged with acts in violation of the Penal Law of the State of New York.

17. The Plaintiff had not committed or attempted to commit any illegal acts.

18. The Plaintiff had not given, defendant, CITY, its agents, servants and/or employees, including defendant, HEWITT, probable cause to believe that he had committed the illegal acts of which he was accused.

19. Defendant, CITY, its agents, servants and/or employees, knew or should have known through exercise of proper police procedure and reasonable care that investigation was false, flawed and incomplete.

20. That defendant, HEWITT, knew or should have known through the exercise of proper police procedure and reasonable care that said investigation was false, flawed and incomplete.

21. That defendant, CITY, its agents, servants, and/or employees, willfully and wrongfully accused Plaintiff of having violated the Penal Law of the State of New York.

22. That the defendant, HEWITT, willfully and wrongfully accused of having violated the Penal Law of the State of New York.

23. That all criminal charges against Plaintiff were dismissed in New York County Criminal Court on March 5, 2013.

24. As a result of the aforementioned malicious prosecution, Plaintiff suffered and continues to suffer substantial damages.

25. As a result of the foregoing, plaintiff was caused to suffer personal injuries, violation of civil rights, negligent and intentional infliction of emotional distress, anguish, anxiety, fear, humiliation, loss of freedom and damage to his reputation and standing within his community.

26. By reason of the foregoing, plaintiff demands judgment against defendants, in a sum of money which exceeds the jurisdictional limits of all Courts of lesser jurisdiction.

SECOND CAUSE OF ACTION

27. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "26" above as if fully set forth herein.

28. That defendant, HEWITT's conduct towards Plaintiff was so outrageous and shocking that it exceeds all reasonable bound of decency tolerated by the average member of the community.

29. That defendant, HEWITT, acted with the desire and intent to cause Plaintiff emotional distress or acted under circumstances known to him which made it substantially certain that he would cause such emotional distress to said Plaintiff.

30. That defendant, HEWITT, acted with utter disregard of the consequences of his action.

31. As a result of defendant's shocking and outrageous conduct, plaintiff was cause to suffer personal injuries, violation of civil rights, negligent and intentional infliction of emotional

distress, anguish, anxiety, fear, humiliation, loss of freedom and damage to his reputation and standing within his community.

32. By reason of the foregoing, plaintiff demands judgment against defendant, Hewitt, in a sum of money which exceeds the jurisdictional limits of all Courts of lesser jurisdiction.

THIRD CAUSE OF ACTION

33. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "32" above as if fully set forth herein.

34. That defendants, CITY, negligently trained or failed to train its agents, servants and/or employees, including defendant, HEWITT.

35. That defendant, CITY, negligently supervised or failed to supervise its agents, servants and/or employees, including defendant, HEWITT.

36. That defendant, CITY, negligently disciplined or failed to discipline its agents, servants and/or employees, including defendant, HEWITT.

37. That defendant, CITY, was negligent in its hiring of its agents, servants and/or employees, including defendant, HEWITT, who defendant, CITY, knew or in the course of adequate and proper investigation, should have reasonably known, was unfit to hold his position.

38. That defendant, CITY, was negligent in its retention of its agents, servants and/or employees, including defendant, HEWITT, who defendant, CITY, knew, or in the course of adequate and proper investigation, should have reasonably known, were unfit to hold their positions in that they refused or failed to perform within the statutory and constitutional limits of their authority and misused and abused their position.

39. As a result of the negligence of defendant, CITY, and the acts of defendant, HEWITT, and other agents, servants and/or employees of defendant, CITY, Plaintiff was cause to suffer personal injuries, violation of civil rights, negligent and intentional infliction of emotional distress, anguish, anxiety, fear, humiliation, loss of freedom and damage to his reputation and standing within his community.

40. By reason of the foregoing, plaintiff demands judgment against defendants in a sum of money which exceeds the jurisdictional limits of all the Courts of lesser jurisdiction.

FOURTH CAUSE OF ACTION

41. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "40" above as if fully set forth herein.

42. That on August 17, 2012, defendant, HEWITT, without cause or provocation assaulted and battered Plaintiff.

43. That plaintiff was subsequently falsely arrested by defendant, HEWITT, and detained against his will at the 34th Precinct located at 4295 Broadway, New York, New York.

44. That said arrest, detention and imprisonment were without warrant, probable cause and/or justification.

45. Thereafter, Plaintiff was maliciously prosecuted by defendant, CITY, including defendant, HEWITT.

46. The actions of defendant, HEWITT, heretofore described, constitute unlawful arrest, detention, imprisonment, assault and battery and malicious prosecution and were designed to and did cause specific and serious bodily harm, pain and suffering to Plaintiff in violation of Plaintiff's Constitutional rights as guaranteed under 42 U.S.C. §1983 and as set forth in the

United States Constitution, Amendments First, Four and Fourteen, and the Constitution of the State of New York.

47. That defendant, HEWITT, violated Plaintiff's civil rights by falsely accusing him of having committed a crime in violation of U.S.C. §1983, the U.S. Constitution and the Constitution of the State of New York.

48. That the conduct and actions of defendant, HEWITT, acting under color of State law, in assaulting, battering, detaining and imprisoning and maliciously prosecuting Plaintiff were done intentionally, maliciously, and/or with a reckless disregard for the natural and probable consequences of his acts, were done without lawful justification, and were designed to and did cause specific and serious bodily harm, pain and suffering in violation of the Plaintiff's Constitutional rights as guaranteed under 42 U.S.C §1983 and set forth in the United States Constitution, Amendments One, Four and Fourteen, and the Constitution of the State of New York.

49. That defendant, HEWITT, deprived Plaintiff of his liberty in violation of Plaintiff's civil and constitutional rights, as guaranteed under 42 U.S.C. §1983 and set forth in the United States Constitution, Amendments Four and Fourteen, and the Constitution of the State of New York.

50. That the actions taken by defendant, HEWITT, were undertaken under color of law and would not have existed but for said defendant using his official power.

51. As a result of said the above-mentioned constitutionally impermissible conduct, Plaintiff was cause to suffer personal injuries, violation of civil rights, negligent and intentional infliction of emotional distress, anguish, anxiety, fear, humiliation, los of freedom and damage to his reputation and standing with his community.

52. By reason of the foregoing, plaintiff demands judgment against defendants in a sum of money which exceeds the jurisdictional limits of all the Courts of lesser jurisdiction.

FIFTH CAUSE OF ACTION

53. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "52" above as if fully set forth herein.

54. That the supervisors and policy making officers of defendant, CITY, and its Police Department, as a matter of policy have failed to take steps to terminate the above detailed practices and have failed to discipline or otherwise properly supervise the individuals engaged in such practices.

55. That defendant, CITY, has failed to properly and effectively train its employees with regard to proper constitutional and statutory limits in the exercise of their authority, and such failure continues to this day.

56. That defendant, CITY, hired and retained in its employ certain police officers, including, but not limited to defendant, HEWITT, with knowledge that said police officers had vicious propensities and were, therefore, unfit to be police officers.

57. At all times material to this Complaint, defendant, CITY, acting through its police department, had in effect de facto policies, practices and customs that were a direct and proximate cause of the unconstitutional conduct of defendant, HEWITT.

58. That these policies, practices, customs include, inter alia: the failure to properly screen supervise, discipline, transfer, counsel, or otherwise control police officers engaged in warrantless and otherwise unconstitutional and impermissible arrests and imprisonments, particularly those who are repeatedly accused of such acts; and the police code of silence

wherein police officers regularly cover up police abuse of power by telling false and incomplete stories.

59. At all times material to this Complaint, defendant, CITY, had in effect policies, practices and customs of allowing, permitting and or ratifying police officers' warrantless arrests, assault on detainees and malicious prosecutions.

60. That the policy of failure to screen, discipline, supervise, counsel, transfer, control and correct unconstitutional patterns or conditions, is evidenced, inter alia, by the following.

a) The fact that in only a small percentage of cases involving complaints against police officers is some form of discipline recommended.

b) The fact that cases where complaints have been lodged against police officers were inadequately investigated.

c) The fact that the decision as to whether to discipline a police officer is taken relying primarily on police officers to conduct the investigations of alleged misconduct.

d) The fact that, upon information and belief, only a small number of police officers have been or has been fired for such misconduct since 1989.

e) The fact that of the above-mentioned complaints that were found to be substantiated, most do not result in any kind of meaningful discipline.

61. That the policymakers of the Police Department and defendant, CITY, knew or should have known that defendant, HEWITT, and other police officers in the Department were violating people's Constitutional rights and that said police officers were taking actions that were shocking the conscience or otherwise violating the substantive due process rights of the people of New York City.

62. The defendant, CITY, after the resolution of civil cases that result in verdicts or substantial settlements for victims of police misconduct, almost never reopens an investigation previously conducted.

63. That in a substantial number of cases, defendant, CITY, promotes the officers guilty of misconduct to a position of greater authority.

64. That defendant, CITY, and the New York City Police Department tolerates and encourages police officers to lie to cover up wrongful conduct as evidenced by the Mollen Commission Report, July 7, 1994. The effect of this was to permit police officers of the New York City Police Department to function at levels of significant and substantial risk to the public.

65. The defendant, CITY, failed to effectively screen, hire, train, supervise and discipline its police officers, including, but not limited to, defendant, HEWITT, for his propensity for violence, including excessive use of force and restraint, lack of truthfulness and for his failure to protect citizens from unconstitutional conduct of other police officers and to otherwise cause him injury and violate his federal and state constitutional rights, or to permit these actions to take place with his knowledge or consent.

66. On information and belief, defendant, HEWITT, has been the subject of poor civilian and departmental complaints of misconduct that put, or should have put, the defendant, CITY, and the New York City Police Department on notice that defendant police officers herein were likely to engage in conduct that would violate the civil and constitutional rights of the public, such as the conduct complained of by plaintiff herein.

67. On information and belief, that other police officers involved in plaintiff's arrest had been the subject of prior civilian and departmental complaints of misconduct that put, or should have put, the defendant, CITY, and the New York City Police Department on notice that

defendant police officers herein were likely to engage in conduct that would violate the civil and constitutional rights of the public, such as the conduct complained of by plaintiff herein.

68. The defendant, CITY, failed to put into place and otherwise maintain an adequate structure for risk containment and stress management relative to its police officers. Inter alia, the structure was deficient at the time of pre-selection and selection to evaluation and exchange within the command structure about the performance of individual police officers; to the training of supervisory personnel to effectively and adequately evaluate performance of an officer; and to otherwise put the command structure on notice that an individual or individuals were at significant levels of risk to the public at large or to specific segments thereof. The net effect of this was to permit police officers of the New York City Police Department to function at levels of significant and substantial risk to the public.

69. That as a result of the foregoing conscious policies, practices, customs or usages, defendant, CITY, has permitted and allowed for the employment and retention of individuals whose individual circumstances place the public or segments thereof at substantial risk of being the victims of unconstitutional behavior.

70. That such policies, practices, customs or usages are a direct and proximate cause of the conduct alleged herein and otherwise a direct and proximate cause of the injuries to plaintiff herein.

71. That as a result of the foregoing, plaintiff was caused to suffer personal injuries, false arrest, false imprisonment, violation of civil rights, negligent and intentional infliction of emotional distress, anguish, anxiety, fear, humiliation, loss of freedom and damage to his reputation and standing within his community.

72. By reason of the foregoing, plaintiff demands judgment against defendants in a sum of money which exceeds the jurisdictional limits of all Courts of lesser jurisdiction.

SIXTH CAUSE OF ACTION

73. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered “1” through “72” above as if fully set forth herein.

74. Defendants failed to intervene to prevent, end or report the unlawful and unconstitutional conduct to which plaintiff was subjected despite the fact that they had opportunities to do so.

75. Defendant, HEWITT, displayed deliberate indifference to plaintiff’s rights, including but not limited to plaintiff’s right to be free from unreasonable and unlawful searches and seizures, right to procedural and substantive due process, and right to a fair trial.

76. That by virtue of the aforementioned acts by defendants, plaintiff was deprived of his civil rights guaranteed under the Constitution of the United States, including his right under the Fourteenth Amendments to the United States Constitution, and defendants therefore are liable to plaintiff for damages under 42 U.S.C. §1983.

77. That as a result of the foregoing, plaintiff was severely and seriously injured, both bodily and mentally, suffered a loss of enjoyment of life, pain and suffering, psychological and emotional injury great humiliation, costs and expenses and suffered economic loss and other damages.

78. That defendants are sued in their individual and official capacities.

79. The amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts that might otherwise have jurisdiction over this action.

SEVENTH CAUSE OF ACTION

80. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "79" above as fully set forth herein.

81. That in the event that plaintiff is successful in the prosecution of the aforesaid claim(s), plaintiff shall be a prevailing party within the meaning 42 U.S.C. §1988 and entitled to the recovery of attorneys' fees from the defendants.

82. By reason of the forgoing, the defendants became liable to plaintiff in a sum of money which exceeds the jurisdictional limits of all courts of lesser jurisdiction.

WHEREFORE, plaintiff, CHRISTIAN CASTILLO, respectfully demands judgment against defendants, THE CITY OF NEW YORK and P.O. JOHN HEWITT, Shield No. 676 and requests compensatory and punitive damages in a sum of money which exceeds the jurisdictional limits of all Court of lesser jurisdiction; an award of reasonable attorney's fee pursuant to 42 U.S.C. 1988, costs and disbursements of this action; and such other and further relief as this Court may deem just, fair, and proper under the circumstances.

Dated: New York, New York
January 16, 2014

Yours, etc.

RUBERT & GROSS, P.C.
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New York, New York 10038

BY: 
RICHARD GROSS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.:

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-against-

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Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

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